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9  
10 **UNITED STATES DISTRICT COURT**  
11 **NORTHERN DISTRICT OF TEXAS**  
12 **DALLAS DIVISION**

13 **ANTHONY JOHNSON,**

14 **Civil Action No.: 3:17-cv-3208**

15 Plaintiff,

16 **COMPLAINT AND DEMAND**  
17 **FOR JURY TRIAL**

18 **WELLS FARGO BANK, N.A.**

19 **(Unlawful Debt Collection**  
20 **Practices)**

21 Defendants.

22 **COMPLAINT AND DEMAND FOR JURY TRIAL**

23 Plaintiff, Anthony Johnson (“Plaintiff”), through his attorneys, alleges

24 the following against Defendant, Wells Fargo Bank, N.A. (“Defendant”):

25 **INTRODUCTION**

1. Count I of Plaintiff’s Complaint is based upon the Telephone Consumer  
Protection Act (“TCPA”), 47 U.S.C. § 227. The TCPA is a federal statute  
that broadly regulates the use of automated telephone equipment. Among  
other things, the TCPA prohibits certain unsolicited marketing calls, restricts

1 the use of automatic dialers or prerecorded messages, and delegates  
2 rulemaking authority to the Federal Communications Commission (“FCC”).

3 2. Count II of Plaintiff’s Complaint is based upon Texas Fair Debt Collection  
4 Practices Act (“TFDCPA”), TEX. FIN. CODE 392, which prohibits debt  
5 collectors from engaging in abusive, deceptive and unfair practices in  
6 connection with the collection of consumer debts.

7

**JURISDICTION AND VENUE**

8 3. Plaintiff resides in the State of Texas, and therefore, personal jurisdiction is  
9 established.  
10  
12 4. Jurisdiction of this court arises under 47 U.S.C. § 227 et seq. and 28 U.S.C.  
13 1331.  
14  
15 5. Venue is proper pursuant to 28 U.S.C. 1391(b)(2).

16

**PARTIES**

17 6. Plaintiff is a natural person residing in Garland, Dallas County, Texas.  
18  
19 7. Plaintiff is a consumer as defined by the TFDCPA, TEX. FIN. CODE  
20 392.001(1).  
21  
22 8. Defendant is a creditor engaged in the business of giving consumer loans  
23 with its principal place of business located in San Francisco, CA.  
24  
25 Defendant can be served with process at 420 Montgomery Street, San  
Francisco, CA 94104.

1 9. Defendant is a “debt collector” as defined by the TFDCPA, TEX. FIN. CODE  
2 392.001(6).

3 10. Defendant acted through its agents, employees, officers, members, directors,  
4 heirs, successors, assigns, principals, trustees, sureties, subrogees,  
5 representatives, and insurers.  
6

7 **FACTUAL ALLEGATIONS**

8 11. Defendant is attempting to collect a debt from Plaintiff.

9 12. In or around May 19, 2017, Defendant began placing calls to Plaintiff’s  
10 cellular telephone number (214) 207-0733 in an attempt to collect an alleged  
11 debt.  
12

13 13. The incoming calls came from (602) 523-1204; (602) 523-1205; (877) 361-  
14 5581; and (888) 843-9531; upon information and belief, this number is  
15 owned or operated by Defendant.  
16

17 14. On or about May 19, 2017 at 11:55 a.m., Mr. Johnson answered a call from  
18 Defendant, on his cellular telephone, originating from (602) 523-1204.  
19 Plaintiff heard a pause before the representative began to speak, indicating  
20 the use of an Automated Telephone Dialing System.  
21

22 15. Plaintiff spoke with a representative of Defendants and was informed that it  
23 was attempting to collect a debt. During the call, Mr. Johnson asked for calls  
24 to his cell phone to cease.  
25

16. Despite Plaintiff having unequivocally revoking consent to be contacted,  
1  
2 Defendant continued to call Plaintiff on his cellular phone.

3 17. On or about May 22, 2017 at 9:10 a.m., Mr. Johnson answered a second call  
4 from Defendant, on his cellular telephone, originating from (602) 523-1204.  
5 Plaintiff heard a pause before the representative began to speak, indicating  
6 the use of an Automated Telephone Dialing System.

7 18. Plaintiff, for a second time, spoke with a representative of Defendants and  
8 was informed that it was attempting to collect a debt. During the call, Mr.  
9 10 Johnson asked for calls to his cell phone to cease.

11 12. Despite Plaintiff second request unequivocally revoking consent to be  
13 contacted, Defendant continued to call Plaintiff on his cellular phone.

14 15. On six additional occasions, Mr. Johnson told Wells Fargo representatives to  
16 stop calling his cellular phone.

17 18. Those calls occurred on June 2, 2017 at 9:08 a.m.; June 5, 2017 at 1:34 p.m.;  
19 June 6, 2017 at 12:15 p.m.; June 7, 2017 at 7:30 a.m.; June 28, 2017 at 9:12  
20 a.m.; and July 11, 2017 at 9:13 a.m.

21 22. Between May 19, 2017 and July 14, 2017, Mr. Johnson was called no less  
23 than fifty (50) times after having unequivocally revoked consent to be  
24 contacted on his cellular phone.

1 23. Defendant would call Plaintiff on his cellular telephone three (3) to five (5)  
2 times a day.

3 24. The Federal Communications Commission (“FCC”) noted in its 2003 TCPA  
4 Order that a predictive dialer is “equipment that dials numbers and, when  
5 certain computer software is attached, also assists telemarketers in predicting  
6 when a sales agent will be available to take calls. The hardware, when paired  
7 with certain software, has the capacity to store or produce numbers and dial  
8 those numbers at random, in sequential order, or from a database of  
9 numbers.” 2003 TCPA Order, 18 FCC Rcd at 14091, para. 131.

10 25. The FCC further explained that the “principal feature of predictive dialing  
11 software is a timing function, not number storage or generation.” Id.

12 26. Finally, the FCC stated that “a predictive dialer falls within the meaning and  
13 statutory definition of ‘automatic telephone dialing equipment’ and the  
14 intent of Congress.” Id. at 14091-92, paras. 132-33.

15 27. Defendant consistently called Plaintiff around the same time every day,  
16 indicating the use of a predictive dialer.

17 28. For example, Defendant called Plaintiff at 9:10 a.m. (May 22, 2017), 9:08  
18 a.m. (June 2, 2017), 9:15 a.m. (June 6, 2017), 9:12 a.m. (June 28, 2017), and  
19 9:13 a.m. (July 11, 2017).

1 29. The calls placed by Defendant were often made while Mr. Johnson was at  
2 work, causing interruptions to his workday.

3 30. As a result of Defendant's conduct, Plaintiff has sustained actual damages  
4 including but not limited to, emotional and mental pain and anguish.  
5

6 **COUNT I**  
7 **(Violations of the TCPA, 47 U.S.C. § 227)**

8 31. Plaintiff incorporates by reference all of the above paragraphs of this  
9 Complaint as though fully stated herein.

10 32. Defendant violated the TCPA. Defendant's violations include, but are not  
11 limited to the following:

12 a. Within four years prior to the filing of this action, on multiple  
13 occasions, Defendant violated TCPA 47 U.S.C. § 227 (b)(1)(A)(iii)  
14 which states in pertinent part, "It shall be unlawful for any person  
15 within the United States . . . to make any call (other than a call made  
16 for emergency purposes or made with the prior express consent of  
17 the called party) using any automatic telephone dialing system or an  
18 artificial or prerecorded voice — to any telephone number assigned  
19 to a . . . cellular telephone service . . . or any service for which the  
20 called party is charged for the call.  
21  
22 b. Within four years prior to the filing of this action, on multiple  
23 occasions Defendant willfully and/or knowingly contacted Plaintiff

1 at Plaintiff's cellular telephone using an artificial prerecorded voice  
2 or an automatic telephone dialing system and as such, Defendant  
3 knowingly and/or willfully violated the TCPA.

4 33. As a result of Defendant's violations of 47 U.S.C. § 227, Plaintiff is entitled  
5 to an award of five hundred dollars (\$500.00) in statutory damages, for each  
6 and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B). If the Court finds  
7 that Defendant knowingly and/or willfully violated the TCPA, Plaintiff is  
8 entitled to an award of one thousand five hundred dollars (\$1,500.00), for  
9 each and every violation pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C.  
10 § 227(b)(3)(C).

13  
14 **COUNT II**  
15 **(Violations of the Texas Fair Debt Collection Practices Act,  
16 TEX. FIN. CODE 392)**

17 34. Plaintiff incorporates herein by reference all of the above paragraphs of this  
18 complaint as though fully set forth herein at length.

19 35. Defendant violated the TFDCPA. Defendant's violations include, but are  
20 not limited to, the following:

21 a. Defendant violated TEX. FIN. CODE 392.302(4) by causing a  
22 telephone to ring repeatedly or continuously to annoy the person  
23 called; and

- b. Defendant violated TEX. FIN. CODE 392.302(2) by communicating, by telephone or in person, with the debtor with such frequency as to be unreasonable and to constitute a harassment to the debtor under the circumstances; and
- c. Defendant violated TEX. FIN. CODE 392.303 by collecting or attempting to collect a consumer debt without complying with the provisions of Sections 1692b to 1692j, inclusive, of . . . Title 15 of the United States Code (Fair Debt Collection Practices Act).
  - i. Defendant violated TEX. FIN. CODE 392.303 by violating 15 U.S.C. § 1692d by engaging in conduct, the natural consequence of which is to harass, oppress or abuse any person in connection with the collection of the alleged debt; and
  - ii. Defendant violated TEX. FIN. CODE 392.303 by violating 15 U.S.C. § 1692d(5) by causing Plaintiff's phone to ring or engaging Plaintiff in telephone conversations repeatedly;
  - iii. Defendant violated TEX. FIN. CODE 392.303 by violating 15 U.S.C. § 1692f by using unfair or unconscionable means in connection with the collection of an alleged debt; and

iv. Defendant violated TEX. FIN. CODE 392.303 by violating 15 U.S.C. § 1692c(a)(1) by communicating with the consumer at any unusual time or place known to be inconvenient to the consumer. In the absence of knowledge of circumstances to the contrary, a debt collector shall assume that the convenient time for communicating with a consumer is after 8 o'clock antemeridian and before 9 o'clock postmeridian, local time at the consumer's location.

36. Defendant's acts, as described above, were done intentionally with the purpose of coercing Plaintiff to pay the alleged debt.

37. As a result of the foregoing violations of the TFDCPA, Defendant is liable to Plaintiff for declaratory judgment that Defendant's conduct violated the TFDCPA, actual damages, statutory damages, and attorneys' fees and costs.

**WHEREFORE**, Plaintiff, Anthony Johnson, respectfully requests judgment be entered against Defendant, Wells Fargo Bank, N.A., for the following:

A. Injunctive relief pursuant to the Texas Fair Debt Collection Practices Act, TEX. F. & C. CODE 202.402(1).

B. Actual damages pursuant to the Texas Fair Debt Collection Practices Act, TEX. FIN. CODE 392.403(2):

1 C. Costs and reasonable attorneys' fees pursuant to the Texas Fair Debt  
2 Collection Practices Act, TEX. FIN. CODE 392.403(2)(b);  
3  
4 D. No less than \$100.00 per violation of this chapter pursuant to the Texas Fair  
5 Debt Collection Practices Act, TEX. FIN. CODE 392.403(2)(b); and  
6  
7 E. Statutory damages pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. §  
8 227(b)(3)(C); and  
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10 F. Any other relief that this Honorable Court deems appropriate.

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RESPECTFULLY SUBMITTED,

Dated: November 22, 2017

By: /s/ Stuart M. Price

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